



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 28, 1996

Mr. Charles Buenger  
City Attorney  
City of Hewitt  
Buenger & Associates  
P.O. Box 410  
Waco, Texas 76703

OR96-0435

Dear Mr. Buenger:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 38548.

The City of Hewitt (the "city") received a request for all police records involving an alleged assault. You submitted a copy of the offense report and related records for our review, and ask whether the requested information is excepted from disclosure under section 552.108 of the Government Code.

Section 552.108(a) excepts from disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime." When applying section 552.108, this office distinguishes between cases that are under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986), 434 (1986).

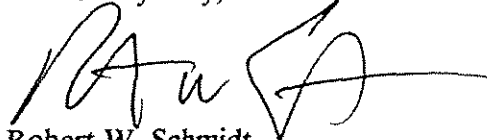
You did not indicate that the requested information relates to a pending case. The documents you submitted, however, indicate that the matter has been sent to the city court for prosecution. If this is correct, and this prosecution is currently pending, you may

withhold the requested information, except to the extent that it includes first-page offense report information, under section 552.108 of the Government Code. We stress that the city must release the type of information deemed public by the *Houston Chronicle Publishing Co.* case regardless of its location within an investigation file. The content of the information determines whether it must be released in compliance with the *Houston Chronicle Publishing Co.* case, not its literal location on the first page of an offense report.<sup>1</sup>

If the prosecution of this case is no longer pending, you must release the requested documents in their entirety. The documents do not establish on their face that release of the information will unduly interfere with law enforcement, nor has the city supplied us with information to make this determination. See Open Records Decision No. 287 (1981) at 2 (governmental body must explain, if information does not supply explanation on its face, how and why release of information will unduly interfere with law enforcement).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and is not a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Robert W. Schmidt  
Assistant Attorney General  
Open Records Division

RWS/ch

Ref.: ID# 38548

Enclosures: Submitted documents

cc: Mr. P. James Rainey  
Novelli, Harvie & Rainey, P.L.L.C.  
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Waco, Texas 76710  
(w/o enclosures)

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<sup>1</sup>We have enclosed a copy of Open Records Decision No. 127 (1976), which lists the types of information which are available to the public.